REPORT ON THE WHITE PAPER

ON A PROPOSED

CODE OF ETHICAL CONDUCT

FOR

SASKATCHEWAN PUBLIC OFFICE HOLDERS

BY

THE HONOURABLE E. M. CULLITON, C.C.

NOVEMBER 1986

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PROVINCE OF SASKATCHEWAN

Regina,

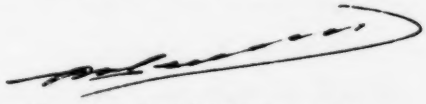
November 28, 1986

The Honourable Grant Devine,
Premier of Saskatchewan.

Dear Mr. Premier:

I have the honour to present to you my report and recommendations respecting the proposed code of ethical conduct for Cabinet Ministers and Legislative Secretaries.

Respectfully yours,



E. M. Culliton, C.C.

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INTRODUCTION

There is a long tradition in the British system of government that supports the stance that members elected will not use their position for personal advantage or gain. At the same time, there is a traditional right of members to represent their constituents and the country as a whole, without impediment. These two principles must be in balance generally if the system is to work without friction or heat. There is a third force that has come to the fore recently. This is the concept of the right, even of those in public life, to a recognized degree of privacy. The overall balance, then, may vary as circumstances change.

Canada adopted the basic principles and premises of the British system making the adjustments necessary to accommodate a federal state. Canadians expect ethical conduct of those who work in government. This is so much our tradition that we become much exercised when breaches of acceptable conduct, and departures from the expected norm, take place. There is a general assumption, and an expectation, that individuals in government will conduct themselves with propriety and with due regard for the public interest.

It is with this background to the fore that one enters any discussions on conflict of interest since performance must be judged within the traditions of our parliamentary system. Guidelines

governing ethical conduct in government must be evaluated against and fit with both the practices of the Canadian democracy and the mores of Canadian society.

The public acceptance of the operation of government in Canada is largely based on a consensus arising out of a willingness to have elected representatives carry out essential activities on behalf of society. It is vitally important, then, that those given power to act, gain and retain the confident belief of the public in the integrity of the governmental processes. We need the best men and women available to the public sector. When the public image of a politician is marred, the public confidence in the governmental system is adversely affected.

Canada is a federal state with governments elected by secret ballot at both federal and provincial levels. While the British system of cabinet government operates at both levels, such is the flexibility of the system that wide divergences of practice may appear. This is evident in matters having to do with ethical conduct and conflict of interest. Indeed, concern over such matters has been expressed at all levels of government.

While the matter of conflict of interest has not been foremost in the public mind in Saskatchewan, the provincial government has brought forward certain measures over the years, enacted to govern the conduct of both elected and appointed personnel in the public service. This has been an on-going process.

The Honourable Grant Devine, Premier of Saskatchewan, tabled a "White Paper on a Proposed Code of Ethical Conduct for Saskatchewan Public Office Holders" on April 18, 1986. Although the document referred to "public office holders", the Premier made

it clear that the public office holders referred to were Cabinet Ministers and Legislative Secretaries. The proposed code of ethical conduct set out in the White Paper, was to be restricted to these elected officials. In tabling the document, the Premier stated that someone would be asked to conduct public hearings in the province to obtain the views and the representations of interested individuals and organizations. Following the hearings, the person would be asked to make a report with recommendations on the contents of the White Paper.

It was pursuant to the above undertaking that the Premier asked me to organize the public hearings, to preside thereat, and to report subsequently as required. I agreed to do so. I was fortunate to have associated with me, Dr. John H. Archer, O.C., former President of the University of Regina. In addition to his academic experience, he has had wide experience in government administration and in the proceedings of the Legislature. I was equally fortunate in securing the services of Miss Frances Prince to act as secretary. She had acted as secretary on a number of previous projects.

It was essential that Dr. Archer and I prepare ourselves by study and research in order to be in a position to discuss the philosophy and practicality of guidelines for those who conduct our public affairs. Such preparation was necessary not only for discussion purposes but also that we might be in a position to assess, to analyse and to understand representations that would be made at the projected public hearings. There was a wealth of relevant material to be gathered and studied.

One problem faced us from the beginning of our research. This was the arriving at some specific meaning of the term "Conflict

of Interest". It was a pressing problem for we were well aware of the tendency of the public and indeed of some elected members also, to confuse "conflict of interest" with "patronage" and also to confuse the former phrase with action and conduct by an elected member that was "improper" or "unacceptable" and which was not what one has a right to expect from an elected representative in public life.

In seeking an answer to this problem, we turned to many sources and to the experience of many jurisdictions. We found one source to be of particular assistance. This was the "Report of the Task Force on Conflict of Interest", a task force established by order of the Prime Minister in a letter dated July 7, 1983. The Honourable Michael Starr and the Honourable Mitchell Sharp were appointed thereby as co-chairmen of the task force. The report of this body set out a comprehensive review of the whole field of conflict of interest as it affects all those engaged in government administration whether they be appointed or elected. We found this document to be most helpful for its reasoned presentation and thoughtful conclusions.

With the directives of the Premier before us, we were primarily concerned with that part of the task force report which dealt with elected officials. It was apparent to us the co-chairmen had made an excellent review of the field--one which could only have been done by persons with wide experience in governmental administration. It was evident that the co-chairmen had felt the need to come to a common definition of the term "Conflict of Interest". We studied their conclusions and other relevant material with great care.

The term has been used loosely and, in many instances, quite wrongly. The co-chairmen of the task force referred to above,

arrived at a definition as follows:

> *"When the private interests of an individual are at variance with his or her official duties and responsibilities to the government, a conflict of interests exists."*

One would have no difficulty in accepting this statement insofar as it goes. But guidelines respecting conflict of interests must be applicable to apparent conflicts of interests as well as to actual conflict situations. A definition of conflict of interest, therefore, should be sufficiently broad as to encompass both situations. Whether an actual or an apparent conflict occurs is dependent upon the benefit or the pecuniary interest that the elected member may, or may appear, to secure in the particular circumstances. With this in mind, our definition would be *"that a conflict of interest occurs or appears to occur, when the possibility of pecuniary or material benefit may be thought to influence an elected member's actions or conduct."*

We thought it fitting and a proper introduction to Saskatchewan practice, to study existing legislation or guidelines in force in other Canadian jurisdictions. The experience of British parliamentarians was found to be important. While we were concerned directly with regulations and guidelines which applied to elected members, nevertheless the broad principles underlying actions taken in other jurisdictions were of interest. Our review was thorough and it uncovered a variety of practices. These practices are set out briefly as they relate directly to the guidelines before us.

There are no guidelines set out in the Province of British Columbia respecting conflict of interests. There is a statute entitled the Financial Disclosure Act under which persons accepting nomination for election to the Legislative Assembly are required to disclose:

(1) the names of each corporation in which the nominee or member holds any shares;

(2) the names of each business in British Columbia from which the nominee or member receives remuneration;

(3) the names of nominee's or member's creditors;

(4) a description of land in British Columbia in which the nominee or member has an interest.

There is also a public requirement for disclosure by a member who owns more than 30 per cent of the votes for election of the directors of a corporation. There is also a list of the assets which need not be disclosed. A breach of the requirements to disclose may result in a fine.

The Legislative Assembly Act of Alberta renders any contracts between an elected member and the government unlawful unless such contract comes within the list of exemptions set out in the schedules. On May 2, 1973, the Premier of Alberta issued a directive requiring cabinet ministers to file with the Clerk of the Legislative Assembly a statement showing:

(1) the legal description of all land in Alberta including mineral rights, in which the member, or the member's spouse, or a minor child has any direct or indirect interest whether as owner, mortgagee, unpaid vendor, shareholder of a private company, or otherwise;

(2) the names of all private corporations in which the member, or his or her spouse, or a minor child has a financial interest;

(3) the names of any proprietorships or partnerships doing business in Alberta in which the member or the member's spouse, or a minor child has any interest.

The statement was to be made public and the cabinet ministers were requested to keep it up to date by filing a statement of additions or deletions as each occurs.

The Premier's directive also provides that cabinet ministers shall not own, directly or indirectly, shares in any public

company whose business might be affected materially by action of the Alberta government. A cabinet minister has the option of placing such shares in a blind trust.

There are no specific provisions or directives in Manitoba respecting conflict of interest. However, the Legislative Assembly Act of Manitoba declares any person contracting with the province, either personally or through a trustee or a third party, is ineligible to sit in the Legislature.

In the province of Ontario, as in other provinces, the eligibility and general conduct of members is governed by the Legislative Assembly Act. Under this statute, members are not permitted to contract with the province either personally or through a trustee or third party.

There are guidelines for cabinet ministers under which these must disclose their interests in the following properties if owned by the minister or by his or her spouse, or by the minister's infant children. This stricture is in force whether such properties are owned personally or through a company or nominee. The list of properties follows:

(1) land in Ontario other than private residential or recreational property;
(2) all shares or debt interests in private companies and lands;
(3) all partnerships or proprietorships in which they are principals.

Ministers must report any change in the holdings disclosed. The list of disclosures is to be filed with the Clerk of the Legislative Assembly and is open for public inspection.

No private company in which the minister, the minister's spouse, or his or her minor children have any interest, may become contractually involved with the government. Further, spouses and

minor children are required to divest themselves of share interests in public corporations, or place these in a blind trust with a licensed trustee. The minister, his or her spouse and his or her minor children, are prohibited from purchasing directly or indirectly, interest in Ontario land or interest in land development companies.

In the province of Quebec, The Legislature Act contains the provisions respecting the eligibilty of members of the Legislature. As well, the Act contains provisions relating to conflict of interest of such members. There are specific directions as to what a member may or may not do in certain areas. There is no requirement for public disclosure of the member's interests. Section 63 places responsibility for avoiding a conflict of interest situation arising on the shoulders of the member. The section reads: *"a member must avoid putting himself in situations where his personal interests may influence the carrying out of his duties."*

The Act further provides that contravention of certain provisions constitutes an offense for which penalties may be imposed or determined by the National Assembly. The Act states: *"the Assembly is fully competent to judge any offense against the Act and apply the prescribed penalties."*

There is a directive to members of the executive council as to disclosure of their interests. These directions read as follows:

"1. Disclosure Requirements

a. Ministers must publicly disclose annually the following:
- *companies of which they, their spouses or their minor children are shareholders or creditors, where the company offers for profit goods or services that might be utilized by the government;*
- *land and buildings owned by the minister, his spouse or minor children, other than residential buildings for their own use;*

- *real estate owned by the minister, his spouse or minor children that is subject to an expropriation order;*
- *individuals, other than financial institutions, to whom the minister, his spouse and his minor children owe any unsecured debts greater than $2,000;*
- *every enterprise or unincorporated commercial undertaking that the minister, his spouse and his minor children hold an interest in, if it is capable of entering into dealings with the Province;*
- *all public corporations in which his spouse or minor children have a holding.*

"2. Restrictions

a. Ministers must divest themselves of all professional, commercial or business interests that might constitute a conflict of interest or prevent them from devoting all their working time to their responsibilities.

b. Ministers must divest themselves of their interests in public companies.

c. Other companies in which the minister or his immediate family have holdings must not trade with the Province.

d. Ministers and their immediate families are forbidden to buy land for speculative purposes or to acquire an interest in Quebec real estate or a land development corporation doing business in Quebec.

Exceptions

- *residential property for personal use;*
- *adjacent residential lots for improvement to those already owned;*
- *agricultural land for the purpose of farming;*
- *premises for ordinary commercial use.*

e. A minister charged with special duties may be required to divest himself or his immediate family of a particular investment."

As well as the requirement for disclosure, there is a requirement that all members must divest themselves of all interests which might constitute the source of conflict of interest or prevent them from directing their full time to their ministerial responsibilities. There are also requirements denying companies in which members of the executive council or the families have an interest,

the right to deal with the government. Certain restrictions are also made respecting the acquisition of real estate for speculative purposes. In case of any dispute as to the interpretation of the directive, the determination of the problem is by the Premier of the province.

In the province of Nova Scotia there are no guidelines nor is there legislation respecting conflict of interest. The House of Assembly Act governs the eligibility and the conduct of all members in the House of Assembly. The Executive Council Act states that *"no person who is a mayor, warden or alderman or councillor of a Municipality may be appointed to the executive council."*
There are no requirements for disclosure of any kind by the member of the House of Assembly or by members of the Executive Council.

In the province of Prince Edward Island, the same situation prevails. There is no legislation nor are there regulations requiring disclosure by members of the Legislative Assembly.

In the province of New Brunswick, under The Conflict of Interest Act, all members of the Legislature including cabinet ministers, must disclose all interests in real and personal property held by the member, the member's spouse and dependent children. There must be disclosure as well, of business and financial involvement apart from those areas particularly exempt, including those assets placed in a blind trust.

The disclosures so required are made to, and examined by, a Queen's Bench judge designated by the Lieutenant-Governor in Council. Upon receiving the written disclosures, the judge is required to forthwith examine the same and he or she may inquire into any matters related to the information so disclosed. Upon finding that a member making the disclosures is not in a breach of

the legislation, he is required to so advise the member of his finding. Such a finding is to be considered prima facie evidence of the member's compliance with the Act.

Members of Parliament in the United Kingdom can trace concern over conflict of interest back over many years. As was reported at the Commonwealth Speakers' Conference (1986):

> *"As far back as can be readily traced, the House has set its face against Members using their position for personal gain, while upholding their constitutional right to represent without impediment their constituents and the country as a whole. This balancing of two principles was not always easy. More recently, the concept of the right even of those in public life to privacy has entered the equation as has a great increase in professional lobbying and in the number of members engaged in public relations and political consultancy. No doubt where the balance is struck in future will vary as circumstances change.*
>
> *"A member is expected to have regard to his public position and the good name of Parliament in any work he undertakes or interests he acquires and to be frank and open about his interests in his dealings with those who would be entitled to know about them. That openness is secured by the Registration and Declaration of pecuniary interests, both being required of members by Resolution of the House. There is no requirement to declare or register interests from which a member does not stand to secure a pecuniary advantage - for example, charitable causes which he supports. Compliance with registration does not absolve a member, where appropriate, from also declaring an interest."*

Declaration and Registration are two distinct matters and complying with one does not absolve a minister from performing the other. Declaration is required only when... a member is doing something relevant to an interest in his parliamentary capacity. The definition of "interest" is purposely made wide. Registration of interest, on the other hand, is required of all members:

> *"to provide information of any pecuniary interest or other material benefit which a member of Parliament may receive which might be thought to affect his conduct as a member of Parliament or influence his actions, speeches or vote in Parliament."*

The requirement to Declare and the requirement to Register are not statutorily defined since the House has always held that it, and it alone, will consider any case put before it, on its merits.

In reviewing the requirement in these other jurisdictions, I have not thought it necessary or advisable to refer to all regulations and legislation relating to ethical conduct and conflict of interests as they refer to public servants and elected members. A review of the guidelines indicates that in all jurisdictions, the principles underlying these are very similar. The area of particular concern relates to the requirement of public disclosures by elected members and whether there are, in addition, other requirements for cabinet ministers and parliamentary or legislative secretaries.

In reviewing the guidelines in the White Paper tabled by Premier Devine, however, one must take into consideration the legislative provisions in force in Saskatchewan that bind all members of the Legislature including cabinet ministers and legislative secretaries. The ethical conduct required by the White Paper is in addition to the mandatory requirements of the pertinent legislation.

The members of the Legislative Assembly of Saskatchewan are governed by the provisions of The Members of the Legislative Assembly Conflict of Interest Act. This Act has two purposes. The first of these is to prohibit members of the Legislature from holding certain offices and from engaging in certain conduct. The second purpose is to require members to disclose publicly certain of their financial interests and assets.

The Act prohibits members of the Legislature from working in government employment; from holding government offices for remuneration apart from holding certain offices related to the administration and the operation of the Legislative Assembly; or from carrying out certain public duties as therein stated, none of which would, by any criteria,

constitute a conflict of interest. It also prohibits a member of the Legislative Assembly from holding the office of Governor-General, Lieutenant-Governor or Judge of any court whilst he or she remains an elected member.

Under the Act, a member of the Legislative Assembly is prohibited in his personal capacity, from entering into a contract with the government except for certain types of contracts which are specified in that Act or in other legislation. Legislative provision is also made for the handling of a contract entered into by a member prior to his or her becoming a member. There are safeguards set out insofar as corporations are concerned in which the member has a financial interest. It is fair to say that compliance with the legislation governing the conduct of a member relative to contracting with the government, will avoid the possibility of conflict of interest arising. These provisions do not apply to a member's spouse or dependent children unless these are acting in a contract on his or her behalf.

The Act also requires a member of the Legislative Assembly on or before April 30 of each year to file with the Clerk of the Assembly a report disclosing certain assets and interests that were held during the previous calendar year from a period commencing 60 days after the member took his oath of office. Assets and interests to be disclosed include all government contracts participated in by the member, by corporations in which he has an interest, or by any person in his family; all debts in excess of $5,000.00 owing to the member or any person in his family; all rights in land whether or not in Saskatchewan; any subsidy or grants received by the member or his family from the government of Saskatchewan apart from those exempted from disclosure by the Act; and all business interest which may be a share value of more than $5,000.00 or which may be more than 5% of the total shares of the company. The member must also report to the Clerk of the Assembly within 60 days, of the execution of a government contract in which the member participated through a

corporation, subject to certain legislative provisions that may exempt from such disclosure. These reports filed with the Clerk of the Legislative Assembly are available for public inspection at any time.

The legislation makes it an offence to contravene the provisions of the Act, punishable on summary conviction to a maximum fine of $10,000.00. As well, within 60 days the member must cease the action or remedy the omission for which he was convicted. If he fails to do so, he is subject to a further offence involving an additional fine and the loss of his seat in the Legislature.

I have set out in rather general terms the actions taken by Canadian provinces other than Saskatchewan, the federal power in Canada, and by the United Kingdom, to deal with matters relating to conflict of interest. I deemed this general background to be an essential introduction for not only must one be knowledgeable of the actual programs put in place, but one must also be cognizant of the factor or factors underlying such programs and the means adopted to implement the same. It was thought necessary to give the Saskatchewan practice in more detail. It will be noted that the problem has been approached somewhat differently in the various jurisdictions. In some, the legislative process has been adopted. In others, guidelines have been set out by the Prime Minister or the Premier. In some, a combination of both practices has been adopted. In Great Britain, action has been by resolution of the House of Commons. However, a study of these various programs and practices makes it quite clear that, notwithstanding difference in approach, the ends desired and to be obtained, are the same.

There is a further observation I would make on my review of the above. In those jurisdictions where legislation or guidelines have dealt with conflict of interest, there is legislation governing members in any actual or potential contractual relationship with the government. The legislation relates not only to a member but also to corporations, partnerships or other business operations in which the member has an interest which would, or would appear to be benefited by the contract. On the whole, the legislation reviewed adequately covers the area of a member's contractual relationship with the government. Compliance with the legislation by a member would thus avoid any conflict of interest problem. This is certainly true of the legislation in force in Saskatchewan. As a consequence, any reference thereto in new or additional guidelines would be unnecessary.

I turn then to the review and study of the legislation and guidelines adopted by the various jurisdictions. In my view, these conclusions may be accepted:

(1) the basic purpose of either guidelines or legislation adopted respecting conflict of interest is to indicate to elected members and particularly to cabinet ministers and parliamentary and legislative secretaries, that their elected positions must not be used or appear to be used, for personal gain;

(2) the responsibility for deciding whether a particular situation constitutes a conflict of interest is a determination to be made by the member involved and for which he or she is solely responsible;

(3) guidelines and legislation are not all-encompassing and are adopted only to assist a member in determining whether or not in a particular situation a conflict of interest exists. They are not intended to be, nor should they be, used as a shield;

(4) the fundamental requirement of all guidelines and legislation respecting conflict of interest, is a requirement for public disclosure by the member of all pecuniary interests in respect of which he could, or might, obtain a financial benefit. The responsibility for determining the interests to be disclosed in accordance with the above, rests with the member;

(5) the degree of disclosure required varies greatly in the different jurisdictions. In Canada, a cabinet minister is required, at the time of his appointment, to provide the Prime Minister with a statement of assets and liabilities. In the United Kingdom, all members are required to disclose for the Public Register those interests in respect of which a financial benefit might accrue. In so doing, the member states neither value nor remuneration. In other jurisdictions the requirement for disclosure lies between these two extremes;

(6) in Canada, and in a number of provinces, a cabinet minister is required to divest himself or herself, of shares or stocks in companies that have, or may have, contractual dealings with the government, or in the alternative, must place such shares or stocks in a blind trust;

(7) no consistent policy of investigation of a charge of conflict of interest, or of disposing of such charge if found to exist, could be garnered from the review and study made. In those jurisdictions which have adopted the legislative approach, a breach of the statute constitutes a summary conviction offence. In other jurisdictions, the political process must prevail although no direction is given as to the means to be used. Only in the province of Quebec is it specifically stated that the National Assembly is competent to judge any offence against the legislation and to apply the prescribed penalties;

(8) the most difficult problem faced in the adoption of guidelines or legislation is that of implementing restrictive requirements sufficient to meet the public interest without creating a situation that would discourage persons of ability, honesty and integrity from entering or continuing a career in public office; and

(9) in a number of jurisdictions, the guidelines apply not only to a cabinet minister but also to the minister's spouse and minor children.

With this background behind me and having read and studied various published articles on the matter of conflict of interest, I felt ready to turn to that part of my mandate dealing with the holding of public hearings throughout the province. Dr. Archer and I were well aware from previous experience that if substantial public input was to be obtained, it would be necessary to stimulate and to develop the interest of organizations and individuals whose views could be construed as the views of the various segments of the provincial population. As a first step, we published in each of the daily newspapers in Saskatchewan a notice advising the public of the White Paper and of the intention to hold public meetings in order to obtain public input. The notice invited all interested organizations and individuals to participate by making their views and recommendations known, both by forwarding a brief or a summary of views, or, if so desired, by making representations at the public meeting to be held. At the same time, members of the public desiring copies of the White Paper were asked to write to the secretary.

Dr. Archer and I both felt that the newspaper notice alone would not be sufficient to stimulate the degree of interest we believed necessary to obtain a public view on the White Paper.

We therefore prepared a list of organizations which, in total, would be representative of all segments of our provincial society. Our list included:

(1) The Law Society of Saskatchewan;
(2) The National Farmers Union;
(3) The Saskatchewan Association of Rural Municipalities;
(4) The Saskatchewan Urban Municipalities Association;
(5) The Saskatchewan Teachers Federation;
(6) Saskatchewan School Trustees Association;
(7) Saskatchewan Federation of Labour;
(8) The Saskatchewan Wheat Pool; and
(9) The Saskatchewan Weekly Newspapers Association.

We wrote to each organization enclosing a copy of the White Paper and setting out some background to the same. In each letter we sought the participation and co-operation of the organization in making its views and representations known. Dr. Archer and I personally delivered this letter to the executive officer or officials of each organization. We discussed all aspects of the Inquiry with such officer or officials. We received a warm reception and all parties displayed a distinct interest in the matter. All assured us of their intention to participate.

In addition to the above, we met together with the editor of the Regina Leader Post and the editor and staff of the Saskatoon Star-Phoenix. We also met with the city editor of the Moose Jaw Times-Herald. Dr. Archer met with staff members of the Prince Albert Herald and the editor of the North Battleford Optimist and the Humboldt Times. All those contacted evidenced a keen interest in the matter covered by the White Paper and were eager to the extent they thought proper for a newspaper. The visits provided opportunity for excellent and stimulating discussion.

A meeting was also held with an official of the Saskatchewan Weekly Newspapers Association. He voiced his opinion that the Association was interested in the adoption of guidelines for cabinet ministers and for legislative secretaries as this should result in the avoidance of actual or apparent conflict of interest situations. As a follow-up, we contacted a number of publishers of weekly newspapers who had, in the past, displayed a keen interest in provincial matters.

We felt it important that the academic field not be overlooked - hence I interviewed the Dean of Law and the Dean of Commerce at the University of Saskatchewan. Dr. Archer interviewed the Dean of Administration at the University of Regina. These interviews resulted in the submission by each of the deans contacted. These briefs showed that much thought and care had gone into their preparation. Indeed, the input was most welcome.

To round out the coverage, we interviewed the Honourable Allan Blakeney, P.C., M.L.A., Leader of the Opposition, and Mr. Ned Shillington, M.L.A. Mr. Blakeney stated that since he had a forum in the Legislature, it would not be necessary to ask his party to present a brief. We also met with Mr. Ralph Goodale, leader of the Liberal Party in Saskatchewan. He promised that his party would participate and co-operate to the full.

We had planned and carried out a wide coverage of individuals and organizations that would have a genuine interest in the matter of conflict of interest and who might be expected to contribute views and suggestions. The wide coverage also gave us opportunity to plan for the public hearings promised in the White Paper. I determined, after consultation with those who would participate by appearing before me, that the holding of public hearings

in Regina and Saskatoon would accommodate all who wished to appear before me and which would not greatly inconvenience anyone. I therefore set the dates for public hearings for August 25th and 26th in Regina and for August 28th in Saskatoon. The notice to this effect was carried in the newspapers. The public hearings were to be held in the court house in each city and the necessary arrangements for seating and for recording were made by the court house staff. The arrangements proved to be very satisfactory.

The following organizations prepared submissions or briefs and filed these with my office:

(1) National Farmers Union of Canada;
(2) Saskatchewan Federation of Labour, CLC;
(3) Law Society of Saskatchewan;
(4) Saskatchewan Urban Municipalties Association; and
(5) Saskatchewan Association of Rural Municipalities.

Written submissions were filed by the following individuals:

(1) Dean W. John Brennan of the College of Commerce, University of Saskatchewan;

(2) Dean Murray R. Hutchings, Faculty of Administration, University of Regina;

(3) Mr. R. D. Phillips, General Manager of Western Producer Publications. This was a personal presentation and not presented on behalf of the organization with which he is associated;

(4) Mr. Serath Peiris, City Editor, Moose Jaw Times-Herald. This submission was personal and not that of the newspaper;

(5) Mr. Frederick L. Dunbar, Solicitor, Regina; and

(6) The Honourable C. Irwin McIntosh, former Lieutenant-Governor of Saskatchewan, and publisher of the North Battleford News-Optimist and of other publications.

We met with a number of high officials of the Saskatchewan Wheat Pool in a round table discussion. At this time the officials present gave the views of their organization and voiced opinion also on the White Paper. A similar round table discussion was held with the staff of the Saskatoon Star-Phoenix in Saskatoon.

At the public hearings in Regina, oral presentations were made by the Law Society of Saskatchewan, the Saskatchewan Federation of Labour, the Saskatchewan Urban Municipalities Association, and the Saskatchewan Association of Rural Municipalities. Dean Murray R. Hutchings read a brief and elaborated on it orally. In Saskatoon, the National Farmers Union, Mr. R. D. Phillips, and the Honourable C. Irwin McIntosh gave oral presentations. The public hearings occasioned lively question-and-answer periods which amplified the views expressed and permitted elaboration of views on the major issues. In the main, the oral presentations supplemented the written briefs submitted earlier.

I do not think it necessary or advisable to repeat in detail the observations, suggestions and recommendations which we received in written briefs, oral presentations and during the course of interviews. We had planned the meetings and hearings in order to ascertain opinion and to identify those areas where there appeared to be a consensus of opinion. As well, we were desirous of ascertaining whether there were recommendations that should be considered for adoption. We were not disappointed.

Our research into the practices and statutes bearing on conflict of interest in various jurisdictions had brought to light a number of concerns current and unresolved. It was with

these concerns in mind that we carried on interviews, solicited briefs and comments and held public hearings. The concerns may be generally listed as follows:

(1) What should be the basic foundation of guidelines respecting conflict of interest;

(2) How best may the conflicting rights of the public need and the private rights of the individual member, be reconciled;

(3) What approach may be followed to meet the public need and yet not discourage persons of ability and integrity from seeking public office;

(4) Is divestment of interests that might be the basis for conflict of interest, reasonable and necessary;

(5) Is the alternative of a blind trust realistic;

(6) How should the question of conflict of interest be enforced, or an allegation of conflict of interest be investigated; and

(7) To what extent must the responsibility for avoiding a conflict or an apparent conflict, of interest rest on the individual member.

The Law Society of Saskatchewan in its brief, raised the question as to whether there is a need, today, for a code of conduct and accompanying guidelines to be set out in written form. The Law Society set out an answer to this question as follows:

> *"Common sense and prudent judgment must and should govern all activities of elected public office holders. Potential conflicts of interest and acts of misuse of power are traditionally avoided by those occupying high elected positions. In theory, such conduct that comes to the attention of a Premier has, in our parliamentary system, been dealt with appropriately by the head of Government. It is most desirable that Ministers of the Crown and Legislative Secretaries avoid any act or situation which may be perceived as a conflict of interest or abuse of power by following the dictates of their respective consciences and employing simple, good common sense.*
>
> *"Canadian governmental institutions have operated for many years without written codes of conduct. Some still do. However, the increasing complexities of government activities have resulted in recent years in the adoption of formal rules of conduct for public servants and elected public officials. ....."*

The brief went on to comment on different aspects of a proposed code of ethics and guidelines. It concluded that

> " ... 2. *If it is deemed necessary to formalize a code of ethical conduct with supporting guidelines, it is desirable that the wording of the code be couched in as general language as is reasonably possible. ..."*

The Law Society of Saskatchewan, in its brief, did not question the integrity and sincerity of purpose of cabinet ministers and legislative secretaries. This stance found support in all briefs presented save one. The submission of the National Farmers Union stated:

> *"Even though we appeal to reason and have great respect for parliamentary democracy, we are aware that this great institution has not been insulated from graft, influence-peddling and other forms of self-dealing."*

While this general statement may find some basis in history, it is so general that the particular topic under consideration - conflict of interest - is difficult to identify. I asked the speaker to cite some evidence or some circumstance relative to the Saskatchewan experience that would indicate in any way that there was substance to the view he expressed. He was unable to do so. Indeed, the political life and activities of all cabinet ministers in the various governments of Saskatchewan since the province was established in 1905, has been an open book. A detailed, careful and critical study of the past 81 years revealed not a single instance of a cabinet minister being involved in a conflict of interest situation. This is surely an excellent record. It indicates a conduct of public affairs which fully measures up to that standard which the public expects from those it elects to public office.

In the light of the record set out, it might be argued that there is no need for guidelines in this area. However, I think a review of all the representations made leads to the conclusion reached by the Law Society of Saskatchewan. This was that while there was no immediate problem to be met, the increasing complexity of government activities was such as to make advisable the adoption of some rules or guidelines sufficient to give direction that conflict of interest situations might be avoided. The very fact of there being such rules or guidelines would act as a danger flag, warning members of the ever-present possibility of conflict. I am certain the conclusion reached by the Law Society represents the majority opinions of all segments of the province's population.

It was the opinion of all organizations and individuals making representations, that public disclosure of a member's interest is a basic requirement in guidelines or rules respecting conflict of interest. Our discussions with a wide range of individuals and organizations not making representations, confirmed those opinion. We had already ascertained that it was also the requirement of guidelines in all those jurisdictions we reviewed and which had established guidelines either by legislation or otherwise.

Views varied as to the degree of disclosure that should be required. Some favoured complete disclosure of all interests, whatever they might be, while others favoured a lesser disclosure and would exempt those interests which did not appear to be a likely ground for a conflict of interest. Representations were made, also, that the requirement of public disclosure should apply to all members of the Legislature and not only to cabinet ministers and legislative secretaries. In Saskatchewan,

the legislative requirement for disclosure does apply to all members with additional requirements for cabinet ministers and legislative secretaries set out in the proposed White Paper.

Notwithstanding the generally accepted view that there must be public disclosure of members' interests, that requirement for public disclosure was subject to the caveat that the requirement must not be such as to discourage individuals of good character and integrity from entering public life. I think the consensus of the views of organizations and individuals in this area is fully covered by the following excerpt from the report on Ethical Conduct in the Public Sector to which I have already referred:

> *"There is every reason, however, for the government to strive to achieve simplicity, fairness and reasonableness in its approach to questions of ethical conduct, especially in the sphere of conflict of interest. Wise public policy will avoid imposing unnecessarily harsh restrictions which discourage individuals of high calibre and integrity from seeking, accepting or remaining in public office. Overly strict rules do nothing to enhance confidence in government, and can even become counter-productive when honest people are driven to avoid them because the literal application of such rules can produce manifestly unfair results. This is not just theory. We have seen and heard too many examples of how the present system is unreasonable because it lacks the discretionary element to adjust to circumstances, to differentiate between the important and the trivial, and to distinguish between the letter of the law and its spirit. This is examined in detail later in this report. ..."*

While there is no general objection to the requirement for divestment of certain interests, an important observation was made by Dean Hutchings. In referring to the proposed guidelines, he said:

> *"... The more stringent and restrictive regulations such as these become, the more you restrict the individual freedoms*

of those holding public office. It is my view that the more you restrict the individual freedoms of those who hold public office, those who have an interest in seeking public office will become more reluctant to do so. And so in drawing up such 'guidelines' or sets of rules, one must balance the benefit associated with having the rule in place against the cost of alienating individuals with high ethical standards of conduct who do not want their rights as citizens to be unnecessarily infringed upon if they choose to run for public office. ..."

If there is to be a requirement for divestment of stocks, shares or other interests, there must be an alternative thereto. The alternative suggested in the proposed guidelines is that found in the guidelines of other jurisdictions we have examined. Such interests must be placed in a "blind trust". Almost without exception, the organizations and individuals interviewed expressed grave reservations as to the use of a blind trust. Most felt that the request for a member to place what might be his life savings or business operation in a blind trust was not realistic. It was felt strongly that such a requirement would certainly discourage successful people of integrity and good character from seeking public office. As well, it was said that while many members of the public were not conversant with a blind trust, those who were had no confidence in it. They considered it merely a cover-up. One report observed that a blind trust was not really blind only "visually impaired".

In addition to his general views, a further important observation was made by Dean Hutchings. In referring to the application of the proposed guidelines, he said:

" ... I suggest also that these potential losses of individual freedom fall unevenly on people in our society. Business people who generate their income from their own capital are much more affected than people who have earned their living from employment.

"Let me give you an example. Two individuals are considering running for public office with a view to being appointed to Cabinet. One, a teacher, has built up a list of personal assets worth $500,000. These assets consist of a large home, vacation property and related assets, jewellery, works of art and other assets which do not require disclosure. His most important asset to date has been his income as a teacher, currently in the $40,000 range. Should he be elected and appointed to Cabinet, he is likely to have a position as a teacher to return to if he chooses to serve for only a limited period of time, or if by chance he loses a subsequent election.

"The second is a business person. This individual has a modest home, no vacation property or related assets but has assets also worth $500,000 in total, $400,000 of which are producing assets, assets which produce an income level for him of $40,000. Should he be elected and appointed to Cabinet, he must file a statement for public inspection that shows he owns two corner stores of which he is the sole proprietor, (income from these total $20,000), has an interest in seven other Saskatchewan companies (dividends from these total $5,000). Further, he must either sell his small portfolio of investment in public companies because these companies do business with the Government of Saskatchewan, or he must place his investment in a blind trust. His income from managing this portfolio has in the past generated $10,000 in dividends and realized capital gains. He must also resign as a director of 5 corporations for which he had previously received director's fees of $5,000 per year.

"Should he choose to serve for only a limited period of time, or should he lose a subsequent election, he would have to pick up the pieces of his financial affairs, a task which I suggest is much more difficult for him than it is for the teacher I described previously. ..."

The manner in which a formal complaint respecting conflict of interest would be investigated and disposed of, was a matter of interest to all organizations and individuals. It was generally accepted that apart from criminal charges or contravention of statutes in which penalties are imposed, the Legislature should have full and complete control not only of its members but

also of their conduct. In accordance with this principle, the consensus was that any investigation of a complaint of conflict of interest should be referred to a Select Committee of the Legislature for investigation and report to the Legislature. That body would then determine the sanctions to be applied. A Select Committee was recommended rather than a Special Committee as its composition would give due recognition to all parties in the Legislature. The powers of such a Committee should not restrict, in any way, the unfettered discretion of the Premier to request the resignation of a cabinet minister or legislative secretary at any time he deemed it advisable.

From all the research done and opinions gathered in interviews and hearings, certain conclusions may be set out. These conclusions bear on the recommendations I will make on the provisions of the White Paper and properly come at this time.

I am quite satisfied that the public generally feel that a member must have regard to the public position he holds and must conduct himself so as to maintain and strengthen public respect for, and confidence in government. As the brief of the National Farmers Union put it: *"As long as politicians are viewed as people of integrity, parliamentary democracy will remain healthy."*

and it went on: *"The public is demanding political accountability and morality."*

It is a member's duty to represent his or her constituents and the province as a whole. He or she must be completely open in his or her dealings with the government. In the event of any conflict between the member's interest and the public interest, the public interest must prevail.

It is the primary responsibility of the member to determine whether in any situation an actual or apparent conflict of interest arises. The member's common sense and judgment are his guides in this area. The member must accept those principles which have been long established to govern the conduct of a member so as to avoid a conflict of interest. If a cabinet minister has any doubts as to his position, he should turn to his colleagues for advice and guidance. The legislative secretary facing such a problem, should seek the direction of his minister. At all times a member must maintain that standard of conduct which the public has the right to expect of its elected representatives.

In my opinion, our elected members are persons of integrity; are honest in thought and action; and are actuated by a desire to serve their constituents and their province. This appears to be the general view of organizations and individuals interviewed though one organization questioned so sweeping a statement. While one may disagree with members' philosophy and policy, such disagreement does not indicate either a lack of chracter or sincerity of purpose on either side. True, elected members are human and are subject to the frailties of human nature. True, morality cannot be legislated. If an elected member were determined to use his public office for personal gain, neither the guidelines nor legislation will prevent him from doing so. We have been fortunate, for history establishes that the number so inclined have indeed been few and the few who have done so have paid for their transgressions.

It appears to me, having considered all representations and having reviewed what has been done in other jurisdictions, that the basic requirement necessary to assure a member's openness in

dealing with government and to assure avoidance of conflict of interest situations, is disclosure. By this I mean a complete public disclosure of all those interests of the member which conceivably could be the cause of a conflict of interest situation. It would be virtually impossible to categorize all such interests. The member would be aware of the interest or interests owned which might involve him in a conflict of interest situation. He alone has the responsibility to disclose that interest. The member should not be required to disclose the pecuniary value of such interest. Declaration of the interest would be sufficient. The requirement for such disclosure should apply to all members of the Legislature.

Having made a full disclosure, there should be no requirement for the divestment of any interest. Disclosure assures openness of conduct since the public and other members of the Legislature will be aware of the member's position. It may be observed at this time that it does not necessarily follow that while a member may gain some benefit through his interest by a particular governmental action, that such is wrong, or that such action is detrimental to the public interest.

I do not think a blind trust will serve any purpose. It is unrealistic and may well be unfair to require that a member's interests be placed in a blind trust. Moreover, such a practice does little or nothing to assure the public. There is no requirement, surely, that would do more to discourage people of ability and integrity from entering public life than to require them to place their assets in a blind trust. For all these reasons, I reiterate that a blind trust will not serve any purpose.

I agree with those representations made that urged the investigation of any complaint made respecting conflict of interest be referred to a standing committee. In my view, it would be most appropriate to set up a special standing committee. This would recognize the supremacy of the elected body. It would provide the vehicle for handling and reviewing all disclosures and would ultimately decide matters of investigation and enforcement. There is no doubt in my mind that any investigation by the committee would be thorough and completely fair. The fact of judgment by one's peers would in itself be the strongest deterrent. As the philosopher Voltaire said when contemplating trial by his peers - "I would sooner be judged by a lion of noble birth than by a thousand rats of my own ilk."

In setting out all of the above, I am fully aware that no legislation nor any code can be framed or written to encompass all possible situations. While guidelines are of some assistance, such guidelines must not be so detailed as to provide a shield for, rather than a bar against, wrongdoing. The member is responsible even if the conflict of interest is not one provided for in the guidelines. No one should know better than the member when a conflict of interest situation exists, or appears to exist. To attempt to draw up a comprehensive code is to attempt the impossible and might well be construed as arising out of past conduct of members. Such is not the case in Saskatchewan. I think the guidelines should be simple, reaffirming the responsibility of the individual to avoid conflict of interest situations.

It is evident from the foregoing that I have reviewed the matter of conflict of interest from the standpoint of all members of the Legislature rather than from that of cabinet ministers and legislative secretaries alone. This broadening of the scope arose from two influences. In the first place, it was quite rightly pointed out at the public hearings and during interviewes, that members who were not cabinet ministers or legislative secretaries might well be in conflict of interest situations, at times. Secondly, the requirements for public disclosure apply to all members in some jurisdictions. Two of the organizations which made representations stated that in their opinion any guidelines or directives should be directed to all members. I was aware, nevertheless, of the mandate under which I conducted the Inquiry--namely, that the White Paper defined specific requirements relating only to cabinet ministers and legislative secretaries. The question then arose as to what extent, if any, this mandate restricts the analysis to be undertaken - and the recommendations to be made.

It is evident from the guidelines adopted in other jurisdictions that such guidelines may be imposed by legislation or by directives issued by the Premier and the Executive Council or by resolution of the Assembly. In Saskatchewan, the legislative approach was adopted. The Members of the Legislative Assembly Conflict of Interest Act was assented to on May 11, 1979 and came into force on November 30, 1979. Subsequent amendments were adopted in 1980, 1981 and 1982. The original Act and the amendments are applicable to all members of the Legislative Assembly.

Having adopted the legislative approach, it would be inadvisable, in my view, to depart from that policy. To do so would entail the adoption of an additional set of guidelines for those members who are cabinet ministers and legislative secretaries. Clearly, the basic foundation of all guidelines is public disclosure by a member of all pecuniary interests that such member holds, that may be the grounds for a conflict of interest situation. Public disclosure is effective because it is public. I do not think that confidential disclosure by way of a report to the Premier by cabinet ministers and legislative secretaries would be accepted by the public as readily as would public disclosure by all members. As well, the public might well have some reservations as to the responsibility for the administration of guidelines were it to rest with the Premier alone.

If it is agreed that public disclosure of a member's interest is an effective means of preventing a conflict of interest situation, then there is no need for a requirement that there be a divestment of such interest. Certainly a requirement for divestment would discourage many persons of ability and integrity from seeking public office. In my view, then, it would be preferable to run the risk of possible conflict of interest arising through non-divestment, rather than to adopt a policy that would discourage participation in public life by people who have much to add to that career.

At this stage of the province's development, I can see no need for the requirement of divestment. A great majority of persons in business in Saskatchewan are those who own and operate their own businesses and it would be unrealistic to require them to dispose of such businesses. It would be equally unrealistic,

in the absence of a requirement for divestment, that such interests be placed in a blind trust. In addition, I am satisfied a blind trust serves no good purpose. To require anyone to put his or her assets in a blind trust and to abide by the terms thereof, is unreasonable. As well, a blind trust is neither understood nor accepted by the public.

I have grave reservations as to the wisdom of attempting to establish a code of ethical conduct for members of the Legislature. There can be conduct that is unacceptable and contrary to the standard of conduct that the public is entitled to expect from its elected representatives. But it would be impossible to formulate a code that would encompass all possible situations. In my opinion, the member must be solely responsible for his or her conduct. I am satisfied that few members, if any, are not aware of the standard of conduct expected of them. Those who are not will have to suffer the consequences for their failure. As well, codification has a limiting rather than a broadening result and may well defeat its very purpose by becoming a shield for the transgressor.

Indeed, I think that the level of ethical standard of members has been under-estimated. Every member knows the "do's" and "don'ts" of public behaviour. It should not be thought necessary to state that members must act within the law; must not seek gifts; must not use government property except for its approved purposes; must not exploit in any way, the position of authority for personal gain. These are matters which every member knows without special codification or special direction. The very fact that the public expects elected members to act in accordance with a general code of conduct, and will take umbrage if such is not done, is itself the greatest deterrent to unacceptable conduct.

Had a legislative policy not been adopted in respect to conflict of interest, I might well have recommended a directive couched in general language placing upon the member the responsibility for avoiding a conflict of interest situation. With such an approach would go the setting up of a Select Standing Committee of the Legislative Assembly with responsibility for giving direction to the directive and for investigating any allegation of conflict of interest that might arise. Such a Committee would make its report to the Legislative Assembly on completing its investigation. The report and recommendations would be dealt with by the Legislative Assembly.

In saying the above, I am not suggesting that such a policy would be or would have been, better than that which has been adopted. The present legislation has been in effect since 1979 and has been amended from time to time since. It has met the situation and I think it would be unwise now to adopt a new policy. I am a firm believer in the theory that when legislation has been in effect for some time and has served its purpose, then there must a strong reason set out before changing it. There is no reason at this time to change the policy adopted in 1979.

In my view, in tabling the White Paper it was not intended that such White Paper even with changes, should necessarily become the guidelines for cabinet ministers and legislative secretaries. The real purpose was to set out certain principles with the purpose of stimulating public discussions of the most effective means to avoid conflict of interest situations arising. The filing of briefs and presentations at public hearings together with personal discussions were the opportunities for

interested organizations and individuals to express their review of the suggested principles and to make recommendations to make them more effective. Needless to say, the response from organizations and individuals was excellent--much greater than anticipated. Not only was there a free discussion of all principles, but a number of suggestions were made which must be considered and which may be adopted.

Having decided that the legislative approach to guidelines and direction adopted by the Legislative Assembly in 1979 should be continued, it follows that any extension or amendment to such guidelines should be by amendment to that legislation and not by a separate document. In addition, as I am convinced that any attempt to provide a code of ethics for members is both inadvisable and unnecessary, then reference thereto should be eliminated in conflict of interest guidelines and legislation. Too, provisions respecting a particular requirement of a cabinet minister should be in the appropriate legislation and not be confused with conflict of interest matters. Care must be taken, as well, in considering the question of conflict of interest not to classify patronage, collection of campaign funds and related matters as being encompassed in that study. These are separate and entirely different problems.

In the present case, I am concerned only with the question of conflict of interest. This was the sole area discussed with all the interested organizations and individuals with whom we had discussions and from whom we received briefs and oral representations. Finally, I am convinced that both control of its membership and the conduct of its members must remain with the Legislative Assembly. Apart from criminal actions, therefore, all other matters of conduct should be investigated and dealt with

by the Legislative Assembly in an appropriate, expeditious and straightforward manner. Involvement of the courts and the so-called independent person in this area is not necessary.

I turn, then, to a detailed review of the White Paper with the purpose of making recommendations to give effect to my conclusions. In order to establish the supremacy of the Legislative Assembly in conflict of interest problems, I recommend that The Legislative Assembly and Executive Council Act be amended to require the appointment of a standing commitee of the Legislative Assembly entitled "Committee of Members' Interests". To this committee should be assigned the responsibility of overseeing the operation of the Act, of considering complaints relative to the Act and of investigating any charge or allegation of a conflict of interest. This committee should be directed to review the reports filed with the Clerk of the Assembly at an appropriate time to ascertain whether there has been compliance with the provisions of the Act and to report to the Assembly. As well, the committee should be authorized to require such additional disclosures as it deems necessary and which are not inconsistent with the Act.

It is Section 19 of The Members of the Legislative Assembly Conflict of Interest Act that requires public disclosures by all members. I recommend that this section be amended as follows:

(1) that a new clause "c" be enacted to read: *"all those interests that the member has, without declaring the pecuniary value, which might reasonably be held possible to affect his or her legislative actions, and without restricting the generality of this clause";*

(2) redesignate present clauses "c" to "g" to be *"d" to "h";*

(3) that a new clause, "i", be enacted to read: *"such other interests as the committee may request.*

The foregoing proposed amendments widen the field of disclosure and place upon the members the responsibility of disclosing their relevant interests. It eliminates the possibility of using the legislation as a shield and establishes a right to examine any allegation of conflict of interest in the light of the prevailing circumstances.

I recommend that Sections 23, 24 and 25 of the Act be repealed and the following substituted therefor:

23.-(1) *If a member who after inquiry or investigation by the committee is found guilty of contravening any provision of this Act or of a conflict of interest, may be subject to one or more of the following penalties:*

(a) *a reprimand;*

(b) *the refund of any illicit profit;*

(c) *the refund of the indemnities, allowances, or other sums he received as a member while the contravention continued;*

(d) *a temporary suspension without legislative indemnity;*

(e) *the loss of his or her seat as a member.*

(2) *The committee, after an inquiry or investigation of a charge of conflict of interest or contravention of this Act, shall report its findings to the Legislative Assembly and if it finds the member guilty, shall recommend one or more of the penalties set out in subsection (1).*

(3) *The Legislative Assembly shall have the unfettered right to dispose of the report in such manner it sees fit and it may approve the penalty or penalties recommended by the committee or substitute therefor such penalty as it deems proper.*

I recommend that Section 26 re renumbered "24" and amended as follows: *That subsections 1 and 2 be repealed and that a new subsection 1 be enacted to read: When the finding by the committee that a member has contravened a provision of the Act which has been approved by the Legislative Assembly, the member shall within 60 days of such approval cease or remedy any contravention of which he or she has been found guilty.*

I further recommend that subsection 3 be renumbered "2" and that subsection 4 be renumbered "3" and that the new subsections be amended to read:

(2) *That where a member is found guilty by the committee for failing to comply with subsection (1), and such finding is approved by the Legislative Assembly, the member is on and from the date of such approval, disqualified as a member and the seat is thereupon vacant and the Minister of Justice shall forthwith notify the Speaker of such vacancy.*

(3) *Where the Speaker is notified of a vacancy under subsection (2), he shall*

(a) *if the Assembly is then in session, immediately inform the Assembly of the vacancy and the reason therefor;*

(b) *if the Assembly is not then in session, on the second day after the opening of the next ensuing session inform the Assembly of the vacancy and the reason therefor.*

That subsection (5) be repealed.

I have compared the requirements for public disclosures as set out in the White Paper with the provisions for disclosure as set out in The Members of the Legislative Assembly Conflict of Interest Act. While the wording is somewhat different, it appears to me that the legislative requirement for disclosure now in effect encompasses all those areas of disclosure suggested in the White Paper. If this is not so, then The Members of the Legislative Assembly Conflict of Interest Act should be amended to be certain that the requirements for public disclosure set out in the White Paper are made fully effective.

While Sections 20 and 20.1 of the Act set out interests which the member is exempted from disclosing, the White Paper in Clause 2.3 lists a further number of interests or assets exempt from disclosure. In order that all provisions respecting disclosure

be in one form, I recommend that the Conflict of Interest Act be amended to provide for the exemptions set out in Clause 2.3 of the White Paper.

As Clauses 3.1 and 3.2 of the White Paper do not relate to conflict of interest but to the restriction of the activities of a member of the Executive Council, such provision should be in the Act entitled The Legislative Assembly and Executive Council Act. I therefore recommend that Section 70 of that Act be amended by adding a new subsection (3) to read as follows:

> (3) *Members of the Executive Council shall not outside of their official duties:*
>
> (a) *On a day-to-day basis practice any profession or actively manage or operate any business or commercial activity if it is likely to result or be seen to result therefrom a conflict with their duties;*
>
> (b) *serve as consultants for reward;*
>
> (c) *retain or hold directorships in any financial or commercial operation but may with the written approval of the Premier, retain or accept directorships in philanthropic, charitable or non-commercial character and shall take care to prevent any conflict of interest from arising.*

The proposed direction which makes mandatory that if at a meeting of the Executive Council it comes before such meeting a matter in respect of which a member appears to have directly or indirectly a personal or pecuniary conflict of interest, he or she shall report that fact to the Executive Council and shall not participate in any discussion respecting the matter, is an extremely important recommendation. Compliance with this direction would enable a member of the Executive Council to avoid any actual or apparent conflict of interest arising. As well, and even more important, compliance with this direction obviates the

necessity for any direction as to the divestment of a member's interests or the need for a blind trust.

This requirement is strengthened by a further proposed direction in which a member of the Executive Council if there comes before him a matter in which he or she is required to act and in which he or she has or appears to have a personal or pecuniary conflict of interest, he or she shall report that fact to the Premier who shall designate another member of the Executive Council to act for and instead of such member of the Executive Council.

These two provisions, in my opinion, should be enacted and placed in The Legislative Assembly and Executive Council Act. I recommend that this be done by enacting a new section following Section 70 to read as follows:

(1) *If a matter comes before a meeting of the Executive Council in respect of which a member of the Executive Council has or appears to have, directly or indirectly, a personal or pecuniary conflict of interest, such member shall report that fact to the Executive Council and shall not participate in any decision respecting the matter;*

(2) *If a matter comes before a member of the Executive Council in respect of which he or she is by an act or regulation given authority or is required to do any act or thing or exercise a discretion and the member of the Executive Council has or appears to have, directly or indirectly, a personal or pecuniary conflict of interest in respect of the matter, such member of the Executive Council shall report that fact to the Premier and another member of the Executive Council shall be designated to act for such member in the exercise of the authority or discretion or performance of the day.*

The White Paper also recommends a direction respecting legislative secretaries similar in principle to that which has been

recommended for a member of the Executive Council charged with a particular responsibility. It is under Section 78 of The Legislative Assembly and Executive Council Act that provision is made for the appointment of legislative secretaries. I recommend that a new section be enacted following Section 78 in the following terms:

> *If a legislative secretary becomes involved in any decision in respect of which he or she has or appears to have, directly or indirectly, a personal or pecuniary conflict of interest, he or she shall report that fact to the Premier through the responsible member of the Executive Council and shall not participate in any decision respecting the matter.*

As is apparent in reading the White Paper, the suggestions contained therein relate not only to conflict of interest but also to ethical conduct. In my opinion, to proceed in this way will inevitably lead to confusion as to whether a particular situation constitutes a conflict of interest or constitutes unacceptable conduct. This should not occur. Conflict of interest is a very special area, the avoidance of which is one of the basic foundations of our system of representative government. For that reason, I believe, the Legislature having elected to deal with this problem by legislation, any change, alteration or extension to the principles already enacted, should be done in the legislative field. As well, by proceeding in this way, the guidelines are set out in two pieces of legislation, namely The Legislative Assembly and Executive Council Act and The Members of the Legislative Assembly Conflict of Interest Act which should be well known to all members. By so doing, the guidelines are readily available to the public of Saskatchewan.

Conflict of interests are not necessarily limited to members of the Executive Council and legislative secretaries. I am satisfied the guidelines and requirement for public disclosure of

interests should be applicable to all members. This, too, was the view expressed by a number of organizations that filed briefs or made representations at the public hearings. The manner in which these declarations are suggested to be made together with the provisions to enable members of the Executive Council and legislative secretaries to avoid a conflict of interest situation, establishes a proper balance between the public rights and the member's right to privacy. As well, the recommendations will, I believe, establish an effective code in the area of conflict of interest and at the same time eliminate those elements which would greatly discourage persons of ability and integrity from entering public life.

You will note that I have concluded a code of ethical conduct is not necessary. There are a number of good reasons for reaching this conclusion. First and foremost, there is nothing in the political history of this province that suggests such a code is necessary. Secondly, there is no province in Canada that has found it necessary to provide for such a code. Thirdly, such a code would normally lead to a great deal of political bickering which is something to be avoided and not encouraged. Finally, it would be impossible to devise a code that would encompass every type of unacceptable conduct. The result would then be that the code would become a shield and not a guideline. This is to be avoided. The right of the Legislative Assembly to rule whether a member's conduct is or is not acceptable to be decided in the light of the prevailing circumstances, whatever they may be, must not be eroded or undermined.

I am not suggesting that the adoption of my recommendations will result in a perfect solution to the conflict of interest problem. I do believe they are practical and realistic

and that their adoption will strengthen public confidence both in our system of representative government and in their elected members. If experience proves there are shortcomings, no problem arises in making the necessary changes to overcome them. I firmly believe that the record of the conduct of public men and women in this province over the past 81 years is such as to merit the public's continued confidence and trust.

In conclusion, I must express my thanks and appreciation to Dr. John H. Archer for his assistance and help throughout this study. Together, we interviewed the various organizations and individuals and conducted the public hearings. His knowledge of Saskatchewan and its people supported by his clarity of thought and sound judgment, were of inestimable value in forming the recommendations I have made.